

**EXHIBIT 42**

**PART 1**

Page 1

1       **\*\*C O N F I D E N T I A L\*\***

2       UNITED STATES DISTRICT COURT

3       SOUTHERN DISTRICT OF NEW YORK

4       -----X

5       THE AUTHORS GUILD, et al.,

6       **CONFIDENTIAL**

7                      Plaintiffs,

8                      - against-

Master File No.

9                      05 CV 8136-DC

10

11       GOOGLE, INC.,

12                      Defendant.

13       -----X

14

15       June 8, 2012

16       9:30 a.m.

17

18                      Deposition of JUDITH A. CHEVALIER,  
19                      held at the offices of Milberg, LLP, One  
20                      Penn Plaza, New York, New York, pursuant to  
21                      Agreement, before NANCY SORENSEN, a Notary  
22                      Public of the State of New York.

23

24

25

1 2 APPEARANCES: 3 BONI & ZACK, LLC 4 Attorneys for Plaintiffs 5 15 St. Asaphs Road 6 Bala Cynwyd, Pennsylvania 19004 7 BY: JOANNE ZACK, ESQ.  8 DURIE TANGRI 9 Attorneys for Defendant 10 217 Leidesdorff Street 11 San Francisco, California 94111 12 BY: DAVID McGOWAN, ESQ.  13 ALSO PRESENT: 14 ANY KEATING, ESQ. - GOOGLE 15 SAMUEL WEGLEIN, Ph.D. - Analysis Group 16 17 18 19 20 21 22 23 24 25	Page 2  1 2 JUDITH A. CHEVALIER, 3 called as a witness, having been duly sworn by a 4 Notary Public, was examined and testified as 5 follows: 6 EXAMINATION BY 7 MS. ZACK: 8 (Plaintiff's Exhibits 95 and 96, 9 Expert Report of Judith A. Chevalier and a 10 number of pages collected from Google's 11 website concerning the Partner Program, 12 marked for identification, as of this 13 date.) 14 Q. Good morning. 15 A. Morning. 16 Q. Could you state your full name for 17 the record, please? 18 A. Sure, Judith Ann Chevalier. 19 Q. What is your current position? 20 A. I'm a professor at the Yale School of 21 Management. 22 Q. We have your CV which outlines your 23 various positions. I take it that's up to date; 24 is that right? 25 A. I think so, yes.
 1 2 IT IS HEREBY STIPULATED AND AGREED, 3 by and between the attorneys for the respective 4 parties herein, that filing and sealing be and 5 the same are hereby waived. 6 IT IS FURTHER STIPULATED AND AGREED 7 that all objections, except as to the form 8 of the question, shall be reserved to the 9 time of the trial. 10 IT IS FURTHER STIPULATED AND AGREED 11 that the within deposition may be sworn to 12 and signed before any officer authorized to 13 administer an oath, with the same force and 14 effect as if signed and sworn to before the 15 Court. 16 17 18 19 20 21 22 23 24 25	Page 3  1 J.A. Chevalier - C O N F I D E N T I A L 2 Q. You've brought with you someone else. 3 Could you just tell us who that is? 4 A. Sure, that's Samuel Weglein. He's 5 from the Analysis Group. 6 Q. How do you spell his last name? 7 A. W-E-G-L-E-I-N. 8 Q. Did Mr. Weglein assist you with your 9 report? 10 A. Yes. 11 Q. Anyone else? 12 A. The staff of the analysis group, in 13 general, assisted with my report. 14 Q. What kind of assistance did they 15 provide? 16 A. So I drafted the report. But the 17 staff at Analysis Group helped with tracking 18 down references, wordsmithing, finding things. 19 Things like that. 20 Q. You've been retained by Google; is 21 that right? 22 A. Correct. 23 Q. Approximately when were you retained? 24 A. I think mid to late March. 25 Q. You've been retained as an expert;

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<p style="text-align: right;">Page 6</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L 2 correct? 3 A. Correct. 4 Q. What do you consider to be your area 5 or areas of expertise? 6 A. So economics, industrial 7 organization, and the economics of technology, 8 and competitive strategy, actually. 9 Q. Have you ever done any work for 10 Google before? 11 A. No. 12 Q. Have you ever done any work for any 13 search engine before? 14 A. No. 15 Q. Do you consider yourself an expert on 16 publishing? 17 A. No. 18 Q. Have you ever been retained by Durie 19 Tangri before as an expert? 20 A. No, I have not. 21 Q. By Keker Van Nest? 22 A. I worked on a case in which lawyers 23 from Keker were involved. But I wasn't retained 24 by Keker, I believe. 25 Q. Which case was that?</p>	<p style="text-align: right;">Page 8</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L 2 Q. With respect to these five, did you, 3 you did provide a report in all five, you said? 4 A. Yes. 5 Q. Did you attend a deposition in all 6 these cases? 7 A. No, I attended a deposition in number 8 3, Presstek versus Creo, and in number five, 9 State Attorney General of New York. 10 Q. With respect to the first case, which 11 is the Procter &amp; Gamble Company versus the 12 Coca-Cola Company? 13 A. Yes. 14 Q. Who engaged you there, which side of 15 the litigation? 16 A. Coca-Cola. 17 Q. What type of expert opinion did you 18 provide in that case, generally? 19 A. Yes, that was a patent infringement 20 case, and I calculated lost profits. 21 Q. Anything else other than calculating 22 lost profits? 23 A. I don't think so. 24 Q. What about the second case, which 25 apparently was an arbitration; correct?</p>
<p style="text-align: right;">Page 7</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L 2 A. That was the State Attorney General 3 of New York versus Intel. 4 Q. We have pre-marked as PX 95 your 5 report, and here is a copy. I'm sorry, I don't 6 have copies for the others. 7 I think that we'll start by looking 8 at the list of your previous engagements, which 9 is Exhibit B, I believe, to your report? 10 A. Yes. 11 Q. This is a list within the past four 12 years; correct? 13 A. Actually, as I was reviewing this 14 yesterday, I noticed that I believe the prior, 15 the first three engagements are a little bit 16 older. I should have fixed that. 17 Q. Other than these five engagements, 18 have you been an expert in any other cases? 19 A. So these are the only cases where 20 I've filed reports. 21 Q. Have you consulted as an expert in 22 other cases? 23 A. I've consulted as an expert in cases 24 that have, you know, settled or, you know, 25 somehow ended before I filed a report.</p>	<p style="text-align: right;">Page 9</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L 2 A. Correct. 3 Q. It says, I guess that's SESAC, Inc. 4 versus Television Music License Committee? 5 A. Yes. 6 Q. Which side were you retained by? 7 A. SESAC. 8 Q. What does SESAC stand for? 9 A. I think technically it doesn't stand 10 for anything anymore. 11 Q. Okay. 12 A. They once did. 13 Q. What do they do? 14 A. They license performance rights for 15 music. 16 Q. What expert opinion were you, did you 17 provide there, generally? 18 A. There, I was asked to provide an 19 opinion about the structure of the contract that 20 the television stations would receive from 21 SESAC. 22 Q. What was the nature of your opinion? 23 A. Well, I think that's under -- I mean 24 I believe it's under protective order. So, but 25 generally speaking, my opinion had to do with</p>

<p style="text-align: right;">Page 10</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 different -- yeah, I'm not sure exactly a good      3 way to say it, different type of contractual      4 forms and the effect they would have.      5 Q. These were SESAC contracts?      6 A. Yes.      7 Q. In order to prepare that expert      8 report, did you study the market for the      9 licensing of music?      10 MR. McGOWAN: Object, foundation.      11 You may answer.      12 A. I studied, I studied -- the market      13 for licensing music is very complicated, and      14 there's a number of different pieces. I studied      15 a narrow piece.      16 Q. Just generally, what was the narrow      17 piece that you studied?      18 A. So performance licenses for      19 television.      20 Q. So performance licenses for music on      21 television?      22 A. Correct.      23 Q. Number 3 on your list is Presstek,      24 Inc. versus Creo, Inc. Who engaged you there?      25 A. Creo.</p>	<p style="text-align: right;">Page 12</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 environment.      3 Q. Was it a patent case or --      4 A. No, it's an antitrust case.      5 Q. Did you, in that case, opine on a      6 relevant market or --      7 A. No.      8 Q. You didn't do damages in that case?      9 A. I did not.      10 Q. Case number five, is that another      11 antitrust case?      12 A. Yes.      13 Q. I take it you were retained by Intel?      14 A. Yes.      15 Q. Was your opinion the same there or      16 different than in the other Intel case?      17 A. It was a different report. And the      18 assignment was slightly different. But it was,      19 it was, you know, at a high level, it was the      20 same. It was to analyze the success or failure      21 of competitive strategies in the but for      22 environment.      23 Q. So that was to assist the damage      24 analysis?      25 A. I think it might have assisted both</p>
<p style="text-align: right;">Page 11</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 Q. What is the nature of their business?      3 A. They make printing products. Well,      4 they may do other things, but the case involved      5 printing products.      6 Q. Generally, what was the nature of      7 your report in that case?      8 A. That was also a patent infringement      9 case, and I also calculated lost profits.      10 Q. Did you do regression analyses in      11 these cases where you calculated lost profits?      12 A. I think so.      13 Q. What was the -- I'm guessing that the      14 first case was a 2002 case, is that right, case      15 number one?      16 A. That's my -- I don't remember. But      17 that sounds approximately the right time frame.      18 Q. Referring you to number 4, Advanced      19 Micro Devices, Inc. versus Intel Corporation.      20 Who retained you there?      21 A. Intel.      22 Q. What was the nature of your opinion?      23 A. So that in that case, I provided an      24 analysis of how competitive strategies in the      25 market would succeed or fail in a but for</p>	<p style="text-align: right;">Page 13</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 liability and damages.      3 Q. Have you testified before Congress?      4 A. No.      5 Q. Have you written any articles on      6 copyright matters?      7 A. No.      8 Q. On patent matters?      9 A. No.      10 Q. Have you written any articles on      11 search engines?      12 A. No.      13 Q. On Google?      14 A. No.      15 Q. Amazon?      16 A. Amazon, I've written an article on      17 Amazon, yes.      18 Q. What about Microsoft?      19 A. No.      20 Q. What was your article on Amazon      21 about?      22 A. I have three.      23 Q. Um-hmm?      24 A. Two of them were about loosely      25 estimating cross price elasticities between</p>

<p style="text-align: right;">Page 14</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 Amazon and Barnes &amp; Noble in the book selling      3 market.      4 A second was about user reviews and      5 the effect of user reviews at Amazon and Barnes      6 &amp; Noble.      7 Q. Right.      8 A. Actually, I have another paper that      9 used data from Amazon, so I don't know if you      10 want to count that. That used data from the      11 used book marketplace at Amazon.      12 Q. What type of data about used books?      13 A. Prices and sales. Well, I guess      14 prices, prices and attributes.      15 Q. Not sales?      16 A. No. They were, in all of these      17 cases, these weren't data that we received from      18 Amazon, it was data we collected from the      19 website.      20 Q. Any other articles that -- three or      21 four, I'm sorry, I thought you said there were      22 three.      23 Were you including this one that      24 you --      25 A. So there were three about Amazon.</p>	<p style="text-align: right;">Page 16</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 A. Since I've written the report, I      3 reviewed deposition testimony from Bruce Harris      4 and Gloriana St. Clair.      5 Q. Anything else?      6 A. No.      7 Q. Did anything you read in those      8 depositions cause you to have any changes or      9 additions to your report?      10 A. No.      11 Q. You didn't read the reports of      12 plaintiff's experts?      13 A. Oh, I did, yes, sorry.      14 Q. Which reports did you read?      15 A. I read the report of Ben Edelman.      16 Q. Um-hmm?      17 A. And I read the report of Mr. Gervais.      18 Q. Did anything in those reports cause      19 you to have any changes or additions to your      20 report?      21 A. No.      22 Q. In paragraph 8 of page 2 of your      23 report, you say, "My work in this case is      24 ongoing, and I may amend or supplement this      25 report in light of new information, additional</p>
<p style="text-align: right;">Page 15</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 There were three that I would say were, you      3 know, explicitly more about Amazon, so --      4 Q. The first one was the cross price      5 elasticity --      6 A. There were two related to the cross      7 price elasticity.      8 MR. McGOWAN: I just caution that you      9 need to take turns speaking.      10 A. Sorry.      11 Q. Just for the sake of the record.      12 A. Sorry.      13 Q. That's all right.      14 Referring you to, do you have Exhibit      15 C of your report, which is PX 95?      16 A. Yes.      17 Q. Is this a comprehensive list of      18 everything that you reviewed in connection with      19 your report?      20 A. I believe so, yes.      21 Q. The first category here is legal      22 filings, and you list various legal documents      23 from this lawsuit.      24 Since you've written the report, have      25 you reviewed any other documents?</p>	<p style="text-align: right;">Page 17</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 discovery, or expert testimony and opinion in      3 this case."      4 So as of now, having reviewed these      5 additional materials, you have nothing to amend      6 or supplement?      7 A. Correct.      8 Q. So you were retained mid to late      9 March?      10 A. Correct.      11 Q. Did you talk to anybody from Google      12 in connection with writing this report?      13 A. No.      14 Q. I take it you talked to Google's      15 counsel; right?      16 A. Correct.      17 Q. Did you talk to in-house counsel?      18 A. No, I only talked to Mr. McGowan.      19 Q. You didn't talk to any of the      20 business personnel at Google?      21 A. No.      22 Q. Did you seek to talk to them?      23 A. No.      24 Q. Did you do any empirical research for      25 this report?</p>

<p style="text-align: right;">Page 18</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 MR. McGOWAN: Objection, vague.      3 You may answer.      4 Q. Do you understand my question?      5 A. Yes. So, well, actually, let me      6 clarify your question. So do you mean did I use      7 any numbers for the report?      8 Q. Did you do any research involving any      9 review of data or numbers?      10 A. Yes.      11 Q. What research was that?      12 A. So we obtained a listing of members      13 of publishers that were members of the Partner      14 Program, and we compared that to -- I compared      15 that to -- I instructed my staff to find a list      16 of top publishers in the U.S., and there's a      17 discussion in the report of a comparison between      18 those lists. So it's data that we used.      19 Q. Any other data?      20 A. There was data from the Partner      21 Program that I looked at.      22 Q. What type of data?      23 A. Data about the -- data about the      24 members of the Partner Program and the records      25 from the Partner Program.</p>	<p style="text-align: right;">Page 20</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 that's the piece that I don't see here, as I sit      3 here. Though, it I may be forgetting where it's      4 put.      5 RQ MS. ZACK: If that data has not been      6 produced to plaintiffs, I would request      7 that it be produced.      8 MR. McGOWAN: It has been produced.      9 MS. ZACK: Are you talking about      10 particular PX's or documents with Bates      11 numbers?      12 MR. McGOWAN: It's a Bates labeled      13 document.      14 MS. ZACK: Can you amend, tell me      15 what the numbers are, so we can amend this,      16 and I can know what we're referring to.      17 MR. McGOWAN: Perhaps at the break if      18 you give me a moment.      19 MS. ZACK: Yes, sure. I'm not asking      20 you to do it this second.      21 MR. McGOWAN: I understand.      22 Q. You say in your report that you had a      23 conversation with Bruce Harris; is that correct?      24 A. I did.      25 Q. That was over the telephone?</p>
<p style="text-align: right;">Page 19</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 Q. What do you mean by records?      3 A. So there's a listing of the partners      4 and their relationships over time, and the      5 payments.      6 Q. What type of payments?      7 A. Payments relating to the Partner      8 Program. So payments to the partners.      9 Q. Anything else? Any other data?      10 A. No, I don't think so.      11 Q. You didn't personally do any analysis      12 of Google's costs in connection with either the      13 Partner Program or the Library Project?      14 A. No, I did not.      15 Q. Is the data that you looked at      16 included in the list that is Exhibit C to your      17 report, the data you just referred to?      18 A. I think so. Let me check exactly how      19 that -- well, the, the Nielson BookScan Report      20 is included. I don't, as I see here, see the      21 list of participants in the Publishers Program      22 included, though it may be included by reference      23 in another piece.      24 Q. What about the data about payments?      25 A. So that's the same data source. Yes,</p>	<p style="text-align: right;">Page 21</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 A. Yes.      3 Q. Was that at your request?      4 A. Yes.      5 Q. How long was that conversation?      6 A. I don't recall precisely. I would      7 say on the order of a half an hour.      8 Q. Did you take notes?      9 A. I don't think so.      10 Q. So you didn't take any notes?      11 A. No.      12 Q. What did he tell you?      13 A. I asked about common practice in the      14 industry, and I asked about advice he would give      15 his clients.      16 Q. Anything else?      17 A. Not that I recall.      18 Q. You asked him about common practice      19 in the industry about what?      20 A. So I asked him about common practice      21 about the use of excerpts to promote books.      22 Q. Anything else? Any other common      23 practices?      24 A. We discussed, in general, the      25 difficulty in the industry of being found, of a</p>

<p>1 J.A. Chevalier - C O N F I D E N T I A L      2 book being found by readers.      3 So, and the common practices in the      4 industry for publishers to help their books      5 reach readers.      6 Q. Anything else about common practices?      7 A. That's what I recall.      8 Q. You asked him about advice he would      9 give his clients, and that was on what subjects,      10 advice he would give them on what subjects?      11 A. So I asked whether he would encourage      12 clients to make their books available to      13 programs like Amazon Search Inside the Book or      14 other programs that would display parts of the      15 book to consumers.      16 Q. You asked him about whether he would      17 encourage his clients to make their books      18 available in Amazon Search Inside the Book.      19 Did you ask him about whether he      20 would encourage his clients to make their books      21 available in Google Books?      22 A. Yes. I did similar, yes.      23 Q. Anything else?      24 A. That's what I recall.      25 Q. What did he tell you about whether he</p>	<p>Page 22</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 correct.      3 Q. You didn't care about whether he      4 really did it?      5 MR. McGOWAN: Objection,      6 argumentative.      7 You may answer.      8 A. I believe I asked what type of advice      9 he would give his clients, and I don't believe I      10 clarified whether that was advice he had given      11 his clients or whether that was advice that if a      12 client asked, he would give.      13 Q. So did your conversation with him      14 form the basis of any of your conclusions?      15 A. My conversation with him contributed      16 to my conclusions. Though, I also relied, you      17 know, on his reports and the other reports.      18 My conversation with him was not the      19 sole basis of any conclusion.      20 Q. I'm just talking about the subject      21 matter of industry custom and practice.      22 What were the bases of your      23 conclusions about that subject matter?      24 A. Oh, so more generally, is your      25 question more generally in the report, what are</p>
<p>1 J.A. Chevalier - C O N F I D E N T I A L      2 would or wouldn't encourage his clients to make      3 their books available in Amazon Search Inside      4 the Book?      5 A. So my recollection is that he      6 answered that he would encourage his clients, in      7 general, to make their books available in a wide      8 variety of platform that would allow customers      9 to see the book. So including Search Inside the      10 Book.      11 Q. Did he specifically say he encouraged      12 the use of Search Inside the Book by his      13 clients?      14 A. I don't recall whether I asked him if      15 he did encourage his clients or whether he would      16 encourage his clients.      17 I asked, I believe I asked if his      18 clients were seeking advice, would he encourage      19 them to make the book available to programs,      20 such as Google Books or Amazon Search Inside the      21 Book, and he answered that he would.      22 Q. So you didn't ask him whether he      23 actually did it, you just asked him whether you      24 would do it?      25 A. I can't recall, but I believe that's</p>	<p>Page 23</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 the bases of my conclusions about industry      3 practice?      4 Q. Right. You cite Mr. Harris quite      5 extensively.      6 A. I do. So my conversation with      7 Mr. Harris, Mr. Harris's report, Mr. Greco's      8 report, Mr. Aiken's deposition, Mr. Zohn's      9 deposition, and Mr. Perle's deposition and      10 report, all contributed to my understanding of      11 practice in the industry.      12 Q. Anything else?      13 A. So there are other materials I cite      14 that are related to practice in the industry,      15 but I would say the ones I described were the      16 main ones.      17 Q. What other materials that you cite      18 were relevant to that issue?      19 A. So, for example, I cite here --      20 Q. Can you just tell me the page?      21 A. Sure. I'm sorry, the page is not      22 numbered, but towards the end of Appendix C,      23 Publicly Available Sources.      24 For example, I quote an industry      25 practitioner from the Investors Business Daily</p>

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<p style="text-align: right;">Page 26</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 article, and that's in the report.      3 These iUniverse citations, for      4 example, have to do with -- they're mostly in a      5 footnote, but have to do with promotional      6 practices in the industry.      7 These are the ones that I notice,      8 offhand. For example, well, this is "Amazon      9 announces the first publicly available source.      10 Amazon announces sales impact from new Search      11 Inside the Book features." There's some      12 information that, that I used to describe      13 practice in the industry.</p> <p>14 Q. Okay, now you've read Mr. Harris's      15 deposition?</p> <p>16 A. I have.</p> <p>17 Q. You saw that he said that he had      18 never actually advised any clients to put their      19 books in the Google Partner Program?</p> <p>20 A. Yes.</p> <p>21 Q. Does that affect your analysis in any      22 way?</p> <p>23 A. It doesn't affect my analysis,      24 because my understanding from my conversation      25 with him and my understanding from my -- from</p>	<p style="text-align: right;">Page 28</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 A. Correct.      3 Q. Partner Program is by permission?      4 A. Correct.      5 Q. Are you aware of any programs, other      6 than the portion of Google Books that we call      7 the Library Project, that involve the placement      8 of books that are in copyright into search      9 engines, without permission?      10 A. I think -- could you clarify what you      11 mean by placement into search engines?      12 I mean, so, for example, reviews      13 contain excerpts of books, and excerpts of books      14 are therefore, you know, found in search      15 engines. But I don't think, I don't know if      16 that's your question.      17 Q. Are we talking, is your report about      18 Google's search engine or about Google Books?      19 A. My report is about Google Books, but      20 you asked about search engines.      21 Q. Are you aware of any book search      22 engine in which books have been placed without      23 permission, in copyright books, other than in      24 Google Books?      25 A. So I guess what I'm trying to get at</p>
<p style="text-align: right;">Page 27</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 his report, and my understanding from his      3 deposition, and my understanding from the other      4 materials that I relied on, was that, in      5 general, he and many of the other industry      6 practitioners that I'm referring to, as a      7 general practice, encouraged authors or      8 publishers to participate in any programs that      9 had the feature of allowing consumers to find      10 their books through excerpts.      11 Q. So you understand that it's the      12 general practice in the publishing industry for      13 publishers to allow their books to be placed in      14 search engines without permission?      15 MR. McGOWAN: Objection, misstates.      16 Q. Is that your understanding?      17 A. That's not what I said.      18 Q. Well, do you understand that to be      19 the practice?      20 A. What I understand to be the practice      21 is that it is common, it is common practice in      22 the industry for publishers to make excerpts      23 available through a variety of programs.      24 Q. Amazon within Search, Amazon's Search      25 Within the Book is by permission; correct?</p>	<p style="text-align: right;">Page 29</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 is I think you mean by that, where the full text      3 of the book has been placed in the search      4 engine.      5 Q. No, I don't mean that. I mean text      6 of the books.      7 MR. McGOWAN: Asked and answered.      8 MS. ZACK: No, it isn't.      9 Q. Let me ask it a different way.      10 A. Okay.      11 Q. You tell me every search engine where      12 you understand that books are available by      13 search, for search?      14 A. So again, my question, my -- why I      15 don't completely understand your question is      16 when you say books are available for search, do      17 you mean the entirety of the book is available      18 for search?      19 Q. Yes.      20 A. Okay, then I can answer your      21 question.      22 Q. Okay.      23 A. So I believe that Google Books is the      24 only program, that I'm aware of, that has that      25 feature.</p>

<p style="text-align: right;">Page 30</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 Q. What portion? It's not in the      3 Partner Program that has that feature; correct?      4 MR. McGOWAN: Objection, vague.      5 Q. Does Google Partner Program allow the      6 search of the full book?      7 A. My understanding is that the Google      8 Partner Program, that -- I believe that books in      9 the Google Partner Program can be searched, so      10 that when a search term that the consumer uses      11 is found in the book, the book will appear.      12 Q. That's by permission; correct?      13 A. That is by permission; correct.      14 Q. The same for Amazon Search Within the      15 Book?      16 A. Correct, that's by permission.      17 Q. Are you aware of any other search      18 engine that searches the entire book by      19 permission?      20 A. No.      21 Q. The only search engine that you are      22 aware of that searches the entire book, without      23 permission, is Google Books?      24 A. Correct.      25 Q. As to Google Books, it's only books</p>	<p style="text-align: right;">Page 32</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 to allow entire books to be searched on search      3 engines, without permission of copyright owners;      4 are you?      5 A. I guess since you've used the term      6 "allow" and "without permission" in the same      7 sentence, I'm finding it very difficult to      8 answer this question.      9 Q. You can't answer the question? All      10 right, let me hear it restated, and I'll restate      11 it.      12 (The record was read.)      13 Q. You can't answer that question?      14 A. I can't answer that question.      15 Q. You're not opining here that there is      16 a custom and practice in the publishing industry      17 whereby publishers permit, without permission,      18 their books to be searched in search engines,      19 their entire books to be searched in search      20 engines?      21 MR. McGOWAN: Objection, vague.      22 Q. Can you answer that?      23 A. I'm sorry, so you're asking me      24 whether publishers permit, without permission, I      25 just, I can't, I don't understand what you mean</p>
<p style="text-align: right;">Page 31</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 that were copied in the Library Project that had      3 that feature, correct, of being without      4 permission?      5 A. Correct.      6 Q. Do you think a sample of one      7 establishes a custom and practice?      8 MR. McGOWAN: Objection, vague.      9 You may answer.      10 A. So your question was not about      11 permission. Your question originally -- I guess      12 I don't understand your question.      13 Q. I will rephrase it because I did, you      14 know, segue a little bit further back.      15 Do you think that having one search      16 engine that displays without permission -- or      17 searches, excuse me, without permission the      18 entire book, establishes a custom and practice      19 in an industry?      20 A. I haven't -- I described to you the      21 custom and practice in the industry with regard      22 to making promotional materials available. So I      23 guess I don't understand your question.      24 Q. So you're not opining that there's a      25 custom and practice in the publishing industry</p>	<p style="text-align: right;">Page 33</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 by that.      3 Q. You don't understand the concept of      4 permission in publishing?      5 A. I do understand the concept of      6 permission in publishing.      7 Q. Well, why don't you tell me what that      8 is then? What do you understand about      9 publishing permission?      10 A. So I understand that, for example, in      11 this case, publishers permit Amazon Search      12 Inside the Book to search inside the book.      13 And I also understand that publishers      14 permit the Google Partner Program to Search      15 Inside the Book and to display excerpts of the      16 book, so I understand that.      17 And I understand that the publisher,      18 yes, I understand that the publisher gives      19 permission for those programs.      20 And I understand that the books in      21 the Library Project have not received that      22 permission.      23 Q. You can't tell me any other search      24 engine that searches the entire book, that does      25 so without permission; correct?</p>

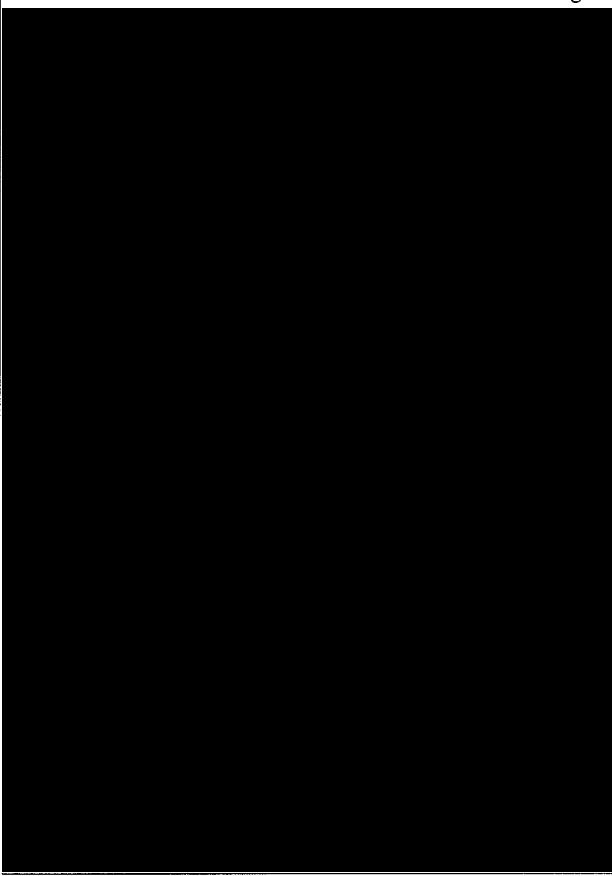
<p style="text-align: right;">Page 34</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 MR. McGOWAN: Asked and answered.      3 You may answer.      4 Q. Correct?      5 A. Correct.      6 Q. So what I'm asking you is from all      7 that information, do you discern a custom and      8 practice with respect to the placement and      9 search of in copyright books in Google Books?      10 A. By custom and practice, it is my      11 understanding that publishers in a wide variety      12 of formats and authors, encourage sampling from      13 their books.      14 I also understand that the Google      15 Books provides sampling from the books.      16 Q. So do you understand from any source      17 that publishers and authors encourage sampling      18 of their books in search engines that display or      19 search entire books without a copyright      20 permission?      21 MR. McGOWAN: Objection. Vague and      22 compound.      23 You may answer.      24 A. Sorry, can you repeat that?      25 MS. ZACK: Please re-read it.</p>	<p style="text-align: right;">Page 36</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 Q. Have you asked anyone whether that's      3 true or not?      4 A. I have not.      5 Q. You didn't ask Google?      6 A. I imagine there may be books that      7 they don't place in the Partner Program, but I      8 didn't ask.      9 Q. So you imagined that a publisher      10 might make a choice not to put certain books      11 into the Partner Program; correct?      12 A. They might.      13 Q. Why might they not do that?      14 MR. McGOWAN: Objection. Calls for      15 speculation.      16 You may answer.      17 MS. ZACK: She said she imagined.      18 A. Yes, so I concede that it is possible      19 that publishers may not put all of the books in      20 the partner Program.      21 But I have not investigated whether,      22 to what extent that is true or why that might      23 be.      24 Q. You don't think that's relevant to      25 your report?</p>
<p style="text-align: right;">Page 35</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 (The record was read.)      3 A. So I think perhaps the difficulty      4 here is that the permission is, the -- as I      5 explained in my report, the getting noticed of      6 the book, the advertising, the creation of      7 awareness, is the economic construct in which,      8 you know, publishers and authors have an      9 interest.      10 They give permission for that in many      11 circumstances. But it's not, it's not the      12 giving of permission that creates value for      13 them. It's the advertising of the book.      14 So I understand that -- what I      15 understand, my inference from the Google Partner      16 Program, is that when given an opportunity to      17 provide more materials, have a greater display      18 of the book, many publishers, all of the large      19 publishers in the U.S., have found that to be a      20 valuable opportunity.      21 Q. Do you understand that all the      22 publishers who are members of the Partner      23 Program, allow all their books to be placed in      24 the Partner Program?      25 A. I don't know that they do.</p>	<p style="text-align: right;">Page 37</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 A. I investigated the participation of      3 publishers in the Partner Program. I do not      4 know of -- I do not know of books that are      5 exceptions to that program, you know.      6 Q. If I told you that there were, would      7 that change your analysis?      8 A. If you told me that there were some      9 exceptions, that would not change my analysis.      10 If you told me that, if you told me      11 that -- yes, if you told me there were some      12 exceptions, that would not change my analysis.      13 Q. Suppose I told you that 30 percent of      14 the books aren't put in the Partner Program,      15 would that change your analysis?      16 A. No.      17 Q. How about 50 percent?      18 A. No.      19 Q. Seventy percent of the books?      20 A. If you told me that the publishers      21 who are participating in the Partner Program --      22 I mean I recognize not all publisher participate      23 in the Partner Program.      24 If you told me that of the publishers      25 that participate in the Partner Program, they</p>

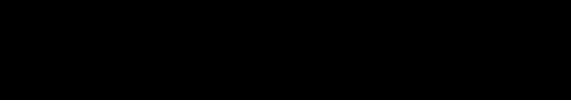
<p style="text-align: right;">Page 38</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 chose to keep 30 percent of -- sorry, chose to      3 keep 70 percent of new books out of the Partner      4 Program, that might change my -- that would      5 change my analysis.</p> <p>6 Q. It might or it would?</p> <p>7 A. I would have to think about it. I      8 think it would. Now I note that I think that's      9 true, there are some cost to publishers of      10 participating in a Partner Program.</p> <p>11 So I would have to think about      12 exactly -- I would have to think about it, you      13 know. I think what I say is true for, you know,      14 new books being created by the publisher.</p> <p>15 Q. Well, you haven't talked to      16 publishers about why they put their books into      17 the Partner Program; have you?</p> <p>18 A. I haven't talked to publishers about      19 why they put their books into the Partner      20 Program.</p> <p>21 Though some of the material in my      22 report discusses, you know, why my understanding      23 from industry practice, about why publishers put      24 their books in the Partner Program.</p> <p>25 Q. Is it your understanding that</p>	<p style="text-align: right;">Page 40</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 with the bookstore. They, you know, as      3 described in Mr. Harris's report, you know, they      4 create blads, they create, you know, sample      5 chapters. Things like that.</p> <p>6 Q. Anything else?</p> <p>7 A. I think there's a myriad of things      8 that they do that are described in the reports.      9 But I'm, you know, I'm not an expert in      10 publishing marketing.</p> <p>11 Q. Is there any value to a copyright      12 owner in the copyright?</p> <p>13 MR. McGOWAN: Objection.</p> <p>14 Q. From an economic point of view?</p> <p>15 A. Is there a value to the owner in the      16 copyright?</p> <p>17 Q. Yes.</p> <p>18 A. So by that you mean is there monetary      19 value to the copyright?</p> <p>20 Q. Economic value of any type.</p> <p>21 A. Well, okay, so by economic value, I      22 think I would take that to mean monetary value.      23 And I would say there certainly are for some      24 copyrights.</p> <p>25 Q. You don't think there's any other</p>
<p style="text-align: right;">Page 39</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 publishers want to control the publicity for the      3 books that they have published?</p> <p>4 MR. McGOWAN: Objection, vague.</p> <p>5 You may answer.</p> <p>6 A. My understanding is that publishers      7 allow a wide variety of sampling with different      8 degrees of control over what that sampling      9 involves.</p> <p>10 For example, books are reviewed      11 without the publisher's permission. And they      12 don't control whether the book is reviewed or      13 the nature of reviews.</p> <p>14 Consumers browse books in bookstores      15 and sample. The publisher doesn't control which      16 parts of the book the consumer reads or how      17 much.</p> <p>18 So there are pieces of the marketing      19 of the book that the publisher controls, and      20 there are pieces of the marketing of the book      21 that the publisher does not control.</p> <p>22 Q. Which pieces does the publisher      23 control, to your knowledge?</p> <p>24 A. So, to my knowledge, the publisher      25 controls, you know, co-marketing arrangements</p>	<p style="text-align: right;">Page 41</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 value, other than monetary value, in owning a      3 copyright?</p> <p>4 MR. McGOWAN: Objection, misstates.</p> <p>5 You may answer.</p> <p>6 A. So there's, you know, economic value      7 would be the monetary value of the copyright or      8 the possible future monetary value created by      9 the copyright.</p> <p>10 Q. Does the copyright basically give the      11 owner of the copyright a monopoly?</p> <p>12 A. Well, the copyright gives the      13 copyright owner a -- not a monopoly in the      14 antitrust sense, but exclusive rights to the      15 copyrighted work, subject to the limitations in      16 the copyright law.</p> <p>17 Q. From an economic sense, is it a      18 monopoly?</p> <p>19 MR. McGOWAN: I object. It's very      20 compound, but you may answer.</p> <p>21 A. So is the copyright a monopoly?</p> <p>22 Q. Um-hmm.</p> <p>23 A. So I think in order to answer that      24 question, you would first have to ask the      25 question of whether the copyrighted goods</p>

<p style="text-align: right;">Page 42</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 constitutes a market over which we can normally      3 use the term monopoly.      4 So copyrighted works compete with one      5 another. So in that sense, I don't think I      6 would -- I would not use the term monopoly as an      7 economist.</p> <p>8 Q. So you would agree that the copyright      9 provides some value, in an economic sense, to      10 the copyright owner, but you limit it to      11 monetary value; is that what your testimony is?</p> <p>12 MR. McGOWAN: Objection.</p> <p>13 A. I have -- you asked me actually about      14 economic value?</p> <p>15 Q. Right.</p> <p>16 A. The economic value is the monetary      17 value created by the copyright, and the      18 potential future monetary value created by the      19 copyright.</p> <p>20 Q. Referring you back to your report,      21 which is PX 95, referring to you page 2.</p> <p>22 Page 2, paragraph 6, you state, "I      23 understand that plaintiffs, three individual      24 authors and the Authors Guild, allege that      25 Google, Inc., ("Google") has infringed the</p>	<p style="text-align: right;">Page 44</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 A. So I consider myself an expert in the      3 areas that I've told you, competitive strategy,      4 industrial organization and economics. You      5 know, copyrights play a role in that, but I'm      6 not a -- for example, I'm not a legal expert in      7 copyrights.</p> <p>8 Q. Well, with respect to copyright      9 specifically, is there some area of copyright,      10 that concept, that you do consider yourself an      11 expert in?</p> <p>12 A. So within the area of copyright, a      13 copyright, a copyright is a, is an input to an      14 economic process.</p> <p>15 And I'm an expert in industrial      16 organization, and so to the extent that, you      17 know, copyrights and perhaps they play a      18 particular role in the economics of technology.</p> <p>19 So I'm an expert in -- I'm an expert      20 in the economic processes that use copyrights,      21 but I'm not a specific expert in copyright law.</p> <p>22 Q. Both of these types of industrial      23 organizations and technology involve a lot of      24 different subject matter; right?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 43</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 plaintiffs' copyrights by scanning and indexing      3 several million books as part of its Google      4 Books project, ("Google Books"), as well as by      5 making certain related uses of those works, such      6 as displaying snippets."</p> <p>7 Where did you get that understanding?</p> <p>8 A. So that's my understanding from the,      9 for example, the complaint.</p> <p>10 Q. Anything else?</p> <p>11 A. Sorry, what is your question?</p> <p>12 Q. Did you get that understanding from      13 anything other than the complaint?</p> <p>14 A. You know, I think that, you know,      15 that this is the controversy is, you know,      16 probably, it's most notably in the complaint.      17 But any of the legal filings, you know, have      18 some discussion of that.</p> <p>19 Q. So you understand this is a copyright      20 case; right?</p> <p>21 A. I do.</p> <p>22 Q. You don't consider yourself an expert      23 in copyright; do you?</p> <p>24 MR. McGOWAN: Vague.</p> <p>25 You may answer.</p>	<p style="text-align: right;">Page 45</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 Q. You could apply them to various      3 different subject matters, including copyright;      4 correct.</p> <p>5 A. Correct.</p> <p>6 Q. But you don't consider yourself an      7 expert on all these subjects that you might      8 apply your area of expertise to; do you?</p> <p>9 MR. McGOWAN: Objection, vague.</p> <p>10 A. So I've already answered that I'm not      11 an expert in the legal theory of copyright. I      12 am an expert in industrial organization, which      13 is the study of competition in markets, to which      14 copyrights and other forms of intellectual      15 property are an important input.</p> <p>16 Q. Is your report at all about      17 industrial organization here?</p> <p>18 A. Yes, my report is about, yes. The,      19 yes, my report is about industrial organization.</p> <p>20 Q. In what sense is your report about      21 industrial organization?</p> <p>22 A. So, for example, my report discusses,      23 my report discusses the topic of whether Google      24 Books is a new good. And that is a topic -- the      25 study of new books is a -- sorry.</p>

<p style="text-align: right;">Page 46</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 Q. New goods?      3 A. Strike that. New goods is a study,      4 an important area of study in industrial      5 organization.      6 I discuss whether Google Books, the      7 services provided by Google Books are a      8 substitute or a compliment for the purchase of      9 the book. That is also an area of industrial      10 organization.</p> <p>11 Q. When you discuss those topics in this      12 report, did you include or make any special      13 allowances for the fact that this product that      14 you're studying is a, has a copyright, which      15 distinguishes it from a lot of goods in the      16 marketplace that don't have that legal      17 protection?</p> <p>18 MR. McGOWAN: Objection, foundation.      19 You may answer.</p> <p>20 MS. ZACK: I should restate it.</p> <p>21 Q. When you wrote your report, you were      22 writing about books. In this case, we're      23 talking about copyrighted books which have a      24 certain legal protection.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 48</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 you know, recognize that the products are --      3 that the books are copyrighted, but my analysis,      4 and my analysis, you know, understands that      5 those products are copyrighted, but the      6 opinions, the opinions are opinions about their      7 relationship of the product to other products in      8 the marketplace.</p> <p>9 Q. Have you ever done any reports where      10 you've analyzed barriers to entry in markets?</p> <p>11 A. Expert reports for academic --</p> <p>12 Q. No, any kind of academic writing on      13 barriers to entry?</p> <p>14 A. Sure, I have.</p> <p>15 Q. If you wrote about barriers to entry      16 in a market, would you consider the effect of      17 regulation?</p> <p>18 A. Sure, of course.</p> <p>19 Q. Would you consider the effect of      20 patents and copyrights?</p> <p>21 A. Yes.</p> <p>22 Q. So you would consider that in that      23 analysis to barriers to entry; correct?</p> <p>24 A. Yes.</p> <p>25 Q. Going back to paragraph 6, you make</p>
<p style="text-align: right;">Page 47</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 Q. Which distinguish these goods, these      3 books, from many other goods that you could      4 study in industrial organization.      5 Does your report take account of      6 that?</p> <p>7 MR. McGOWAN: Objection.</p> <p>8 Q. And if it does, how so?</p> <p>9 MR. McGOWAN: Objection, compound.      10 Go ahead, you may answer.</p> <p>11 A. So my report, my report -- I might      12 have to go vague. My report discusses the --      13 let's see, my report discusses the question, for      14 example, whether or not Google Books is a new      15 good.</p> <p>16 And I understand that, and I think I      17 discuss, that an input to the production of that      18 new good is the copyrighted works that are      19 searched.</p> <p>20 Q. Right, but you don't discuss any      21 ramifications of the fact that there is a      22 copyright for the works; right?</p> <p>23 A. That's, that's not, it's -- let me      24 see. I think, you know, the questions that I      25 answer in the report, the issues that I discuss,</p>	<p style="text-align: right;">Page 49</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 no specific mention in paragraph 6 about the      3 distribution by Google to libraries of entire      4 digital copies of books?</p> <p>5 A. I do not mention the library copy      6 here.</p> <p>7 Q. Is there a reason why you don't      8 mention that?</p> <p>9 A. So I, I mention the scanning. And my      10 understanding is the scanning -- my      11 understanding is that Google has made the scan,      12 and they have allowed libraries to download that      13 scan, if they choose to do so.</p> <p>14 So I understand, I understand that      15 the issue of the library copy, but I would, I      16 would, in paragraph 6, the issue of the library      17 copy, to me, is encompassed in the term scanning      18 that I've used.</p> <p>19 Q. So Google's giving the library a      20 copy, you understand; is that right?</p> <p>21 MR. McGOWAN: Objection.</p> <p>22 Q. You understand that that occurs?</p> <p>23 A. I understand that Google provides      24 facilities from which the library can, if they      25 choose, to make a copy.</p>

<p style="text-align: right;">Page 50</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 Q. Have you read the agreements between      3 Google and the libraries?      4 A. I think I have not. I have read the      5 deposition of -- I'm not sure I can pronounce      6 it.      7 Q. Paul Courant?      8 A. Well, I have read the deposition of      9 Paul Courant, which discusses that issue, but      10 I've also read the deposition Stephane      11 Jaskiewicz, which discusses that issue.      12 Q. You haven't read the actual contracts      13 between Google and its library partners?      14 A. No.      15 Q. Google has contractually agreed to      16 provide digital copies to the libraries; are you      17 aware of that?      18 A. As I said before, my understanding      19 from these materials that I've just described to      20 you, is that Google has provided the facilities      21 from which the libraries can make a copy.      22 Q. What do you mean by providing the      23 facilities?      24 A. So my understanding is that the      25 libraries can download a copy, if they choose to</p>	<p style="text-align: right;">Page 52</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 (Brief recess taken.)      3 FURTHER EXAMINATION      4 BY MS. ZACK:      5 Q. Paragraph 7 of your report -- I'm      6 sorry, before I get to paragraph 7, I wanted to      7 ask you something about flipping further back in      8 your report to page 15?      9 A. Um-hmm.      10 Q. If you look at your footnote 64, do      11 you see that?      12 A. Yes.      13 Q. You talk about "The preceding      14 analysis," do you see where I am?      15 A. Um-hmm.      16 Q. "The preceding analysis suggests that      17 such a market could only be created by law      18 because the relevant economic principles would      19 not sustain it otherwise"; do you see that?      20 A. Yes.      21 Q. Those relevant economic principles,      22 are those the same principles you discuss      23 elsewhere in your report or are they different      24 principles?      25 A. So those are the economic principles</p>
<p style="text-align: right;">Page 51</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 do so.      3 Q. But you don't understand that      4 Google's contractually obligated to allow them      5 to download the books?      6 A. Yes, I understand that Google does      7 allow them to download the books, and that's --      8 and I understand that that's part of the      9 agreement with the libraries.      10 Q. Because there's a difference between      11 allowing someone to do something and having a      12 contractual obligation to do it; isn't there?      13 MR. McGOWAN: Objection.      14 Q. As a matter of economics?      15 MR. McGOWAN: Objection to the extent      16 it calls for a legal conclusion.      17 A. So I'm not a legal expert. My      18 understanding is that Google has agreed to make      19 the facilities available to the libraries so      20 that they can download a copy, if they choose to      21 do so.      22 MR. McGOWAN: We have been going a      23 little over an hour.      24 MS. ZACK: If you want to take a      25 break.</p>	<p style="text-align: right;">Page 53</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 that I discussed from point -- all of section,      3 the section labeled B starting on page 14.      4 Q. So you're not referring there to any      5 additional economic principles, other than the      6 ones you've otherwise described in your report;      7 that's just what I want to know; right?      8 A. Right.      9 Q. So the answer is you're not referring      10 to anything outside the report?      11 A. I am -- right. I'm referring to the      12 preceding analysis, which actually perhaps      13 preceding is a poor choice of words, because I'm      14 referring to the analysis in points 48 to 54.      15 Q. Going back to paragraph 7 on page 2,      16 it's a summary of your conclusions.      17 It says, "I conclude based on the      18 evidence I have seen, that: (1) Google Books is      19 new good - it provides benefits to consumers      20 that previous goods did not."      21 When you use the term "Google Books"      22 there, are you saying that Google Books itself      23 is a new good?      24 A. I am saying Google Books itself is a      25 new good.</p>

<p>1 J.A. Chevalier - C O N F I D E N T I A L      2 Q. So that includes both the Partner      3 Program and the Library Project?      4 A. It includes all of the elements of      5 Google Books.      6 Q. If we took Google Books and put it      7 into the two categories, the Partner Program      8 first, is the Partner Program a new good?      9 A. Do you mean the product Google Books      10 implementing only books, only the Partner      11 Program, but not the other books?      12 Q. Yes, let's just say hypothetically,      13 Google Books only included Partner Program      14 books, would that be a new good, in your      15 opinion?      16 A. That would be a new good, but it      17 would be a good of lower value to consumers than      18 the totality of Google Books.      19 Q. Is Amazon Search Within the Book, a      20 new good?      21 A. I haven't analyzed that.</p> 	<p>Page 54</p> <p>8 A. So, in other words, if you took the      9 45,000 partners in the most recent year, and you      10 asked what's the total amount of revenue they      11 received, the mode, the most frequent number.      12 Q. Oh, the modal partner?      13 A. Modal, yes. The mode would be zero.      14 Q. So you're saying the fact that ad      15 revenues are shared, doesn't play a large role      16 in your analysis.      17 Does it play any role in your      18 analysis?      19 A. As I just said, I considered it. But      20 I decided since the ad revenues are small, they      21 don't play a substantial role in my analysis.      22 Q. That's what I'm trying to say. What      23 role do they play? You didn't say it plays no      24 role, so what role does it play?      25 A. I -- I evaluated the Partner Program</p> <p>Page 56</p>
	<p>Page 55</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 and determined that the ad revenue, for most      3 partners, the partner would have to gain      4 substantial benefits from being in the program,      5 apart from the ad revenue, in order to      6 participate. Because for the typical partner,      7 the ad revenues are zero.      8 Q. Is that because nobody is clicking on      9 the books?      10 A. No, I don't think that's right.      11 Q. How do the partners get revenue in      12 the Partner Program, the publishing partners get      13 revenue?      14 A. My understanding is they get revenue      15 if they click on -- if, if consumers click on      16 ads.      17 The publishing partners, of course,      18 also get revenue if the consumer goes and buys      19 the book.      20 Q. Is it your understanding that the      21 publishing partner gets any revenue from the      22 Partner Program, if someone clicks on the Amazon      23 link?      24 A. So my understanding is that the      25 partner gets revenue -- I would actually like to</p> <p>Page 57</p>

<p style="text-align: right;">Page 58</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 double-check this because I would like to get      3 this right.</p> <p>4 But my understanding is that the      5 partner gets revenue only as it might flow      6 through the Amazon transaction, if the consumer      7 buys the book.</p> <p>8 Q. So they get revenue from Google?</p> <p>9 A. My understanding is they do not.</p> <p>10 Q. Well, all right, now I'm confused.      11 It's not your understanding that Google is      12 paying ad revenues to partners when books are      13 purchased at Amazon; are you?</p> <p>14 A. It's my understanding that Google is      15 paying ad revenues to partners when consumers      16 click on ads.</p> <p>17 Q. Is the Amazon link considered an ad?</p> <p>18 A. My understanding is that it is not.</p> <p>19 Q. Where did you get that understanding?</p> <p>20 A. So that's my understanding from the      21 materials I cite here regarding the -- this is      22 my reading of the description of the Google      23 Partners Program that are cited in my report.</p> <p>24 So I cite the Google Partner Program      25 description pages on the Google website, and</p>	<p style="text-align: right;">Page 60</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 are from the Partner Program website. But      3 roughly speaking, these are what I've seen.</p> <p>4 Q. Did you look at the Partner Program      5 contract that was on-line?</p> <p>6 A. Yes, previously.</p> <p>7 Q. Let me hand you what's been      8 previously marked as PX 91.</p> <p>9 Have you seen this before?</p> <p>10 A. I think so, yes. I believe this is      11 the standard downloadable one, correct.</p> <p>12 Q. Yes. So can you just show me, in      13 these documents, where you gained your      14 understanding as to how and on what basis      15 partners receive funds from Google?</p> <p>16 A. So in item 96 --</p> <p>17 Q. PX 96?</p> <p>18 A. -- PX 96, that includes a summary.      19 On the preview page for your book, we display a      20 set of links to buy the books at the major      21 retailers, as well as to a site of your choice.</p> <p>22 These links are not paid for by the      23 site features. Clicking on a link to purchase      24 your book at an on-line retailer, won't generate      25 any revenue directly.</p>
<p style="text-align: right;">Page 59</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 that's my understanding from that.</p> <p>3 Q. So you didn't ask anybody from Google      4 how it works?</p> <p>5 MR. McGOWAN: Objection. Asked and      6 answered.</p> <p>7 You may answer.</p> <p>8 A. I did not. I did not. As I      9 mentioned before, I did not speak to Google      10 employees in preparing this report.</p> <p>11 Q. Do you think the materials that you      12 looked at are crystal clear?</p> <p>13 A. I think the materials -- to me, the      14 materials I looked at were clear.</p> <p>15 Q. I pre-marked PX 96, which is from      16 Google's website. It's a number of pages      17 collected from Google's website concerning the      18 Partner Program.</p> <p>19 Take your time and flip through it,      20 but have you seen any of these pages before?</p> <p>21 A. Yes.</p> <p>22 Q. Are these the same things that you      23 looked at?</p> <p>24 A. Roughly, I think I have looked at      25 these pages. I also cite some other pages that</p>	<p style="text-align: right;">Page 61</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 So that, that's, so that's one piece      3 of it. And then my understanding is Section 8,      4 ads payment.</p> <p>5 "You agree that Google may serve      6 third-party and/or Google provided      7 advertisements, collectively ads, in connection      8 with the authorized content using Google's      9 advertising serving technology. Such ads will      10 appear in the style and format that may be      11 offered generally by Google when such      12 advertising inventory is available.</p> <p>13 "You shall receive a payment related      14 to the number of valid clicks on ads displayed      15 on content excerpt pages as determined by Google      16 for its participants in the program."</p> <p>17 So Section 8, combined with what do I      18 earn from the program, I can't say that this is      19 the exact page I looked at, at the time, but my  </p> <p>23 partners are payments for ads clicked through      24 for standard Google style ads; and that the      25 partner additionally would earn revenues, but</p>

<p style="text-align: right;">Page 62</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 not through the partner -- not through Google      3 for, you know, any incremental sales of the book      4 that might occur.</p> <p>5 Q. Are these revenues from these      6 incremental sales that copyright owners might      7 earn, important to your report?</p> <p>8 A. So because, because those sales occur      9 in other places, you know, they occur at Amazon      10 or at Barnes &amp; Noble, I don't have, I don't have      11 a mechanism to measure them.</p> <p>12 But the fact -- and it is not      13 necessarily the case that incremental sales that      14 take place, would only take place, you know,      15 from the search page from a click.</p> <p>16 But the fact that displaying the book      17 in Google, Google Books, in the Partner Program,      18 would provide incremental sales, is important to      19 my report.</p> <p>20 Because, because as I've said, I      21 think that the revenues from the ad program are      22 de minimis.</p> <p>23 And so the opportunity for readers to      24 learn about the book and, hopefully, buy the      25 book, is -- I have concluded the main benefit</p>	<p style="text-align: right;">Page 64</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 books, it would stimulate demand and how is the      3 author monetizing that or the publisher?</p> <p>4 A. So it will clearly be more difficult      5 for the author to monetize that interest, that      6 increased demand for an out-of-print book.</p> <p>7 So there may be circumstances when      8 monetarily the -- there are probably many      9 circumstances where, you know, the consumer may      10 be interested in purchasing the book, but, you      11 know, there's no mechanism for that to occur.</p> <p>12 The consumer may purchase, you know,      13 in some circumstances, a used book. That      14 doesn't directly benefit the author.</p> <p>15 To the extent, I think it's, I think      16 it's reasonable that, you know, the search, you      17 know -- in circumstances where there's an      18 opportunity for the consumer to buy the book or      19 to buy another book by the author, you know,      20 then the author will benefit; or if enough      21 consumers have interest, you know, there are      22 programs to bring books back into print, which      23 are possible ways in which the author would      24 ultimately benefit.</p> <p>25 Q. Does Google provide any information</p>
<p style="text-align: right;">Page 63</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 from participating in the Partner Program.</p> <p>3 Q. The main benefit to publishers and      4 authors?</p> <p>5 A. The main benefit to publishers and      6 authors.</p> <p>7 Q. Is that also the main benefit to      8 publishers and authors, in your opinion, of      9 having their books available for search through      10 the Library Project?</p> <p>11 MR. McGOWAN: Objection, vague.</p> <p>12 You may answer.</p> <p>13 A. So I think the -- yes, I should note      14 that because many of the books in the Library      15 Program are out of print, the consumer may have      16 limited opportunities to purchase those books.</p> <p>17 But to the extent that there is an      18 opportunity to purchase the book or the consumer      19 becomes interested in the author and purchases      20 the author's other books, you know, on net, I      21 think the publisher and author would receive a      22 benefit from being in the Google Library      23 Project, because it would stimulate interest in      24 demand for the books.</p> <p>25 Q. So with respect to out-of-print</p>	<p style="text-align: right;">Page 65</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 to copyright owners about how many, who are not      3 in the Partner Program, so copyright owners      4 whose books are in Google Books through the      5 Library Project, to your knowledge, does Google      6 provide copyright owners with any information      7 about how many searches have been made on their      8 book?</p> <p>9 A. I believe they do not.</p> <p>10 Q. So how would they know, how does that      11 benefit the author or publisher if they don't      12 know how many, how much demand is being      13 expressed?</p> <p>14 A. Well, if, for example, a number of      15 consumers, if consumers -- so they won't know      16 that the consumer searched for the book.</p> <p>17 But if consumers seek the book      18 through Amazon, if the consumer, if the consumer      19 seeks out the author's other books, the author      20 may not be able to track the extent to which      21 Google Books has driven demand for their books,      22 but it nonetheless exists.</p> <p>23 Q. How do you think Google tracks that?</p> <p>24 A. Well, there are things that are      25 outside of Google's ability to track. So they</p>

<p style="text-align: right;">Page 66</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 presumably know what terms people searched on.      3 They probably do not know what things that came      4 up on a page, unless the person clicks the      5 individual was interested in, they may know --      6 they do know whether the person clicked on a      7 link, but they don't know of the -- they      8 ultimately, do not know whether -- Google, my      9 understanding is, does not ultimately know      10 whether the consumer made a purchase, unless      11 they did so through Google Play, made a purchase      12 in response to having searched for the book.      13 Q. My question is do you know whether      14 Google tracks searches in books?      15 MR. McGOWAN: Objection, vague.      16 You may answer.      17 A. So what do you mean by searches in      18 books?      19 So do you mean does Google keep track      20 of the search terms?      21 Q. Yes, that people use.      22 A. I'm sure that Google has a record of      23 the search terms that people use.      24 Q. Do you think they have a record of      25 what books are displayed as a result of those</p>	<p style="text-align: right;">Page 68</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 sometimes search that way.      3 But, you know, I don't know even how      4 frequent it is for consumers to undertake a      5 secondary search within the book, and I don't      6 even recall that. I don't, haven't used that      7 feature of the website.      8 But they, you know, the entries that      9 the consumer has made in Google websites, I'm      10 sure Google at some moment knows.      11 Though it's, you know, obviously, a      12 mass of data that's probably, you know, in a      13 very raw form. But at some point, they know it.      14 Q. You don't think Google uses that data      15 for its own purposes?      16 MR. McGOWAN: Objection.      17 You may answer.      18 A. I, for example, know that the search      19 terms used at the Google search page are used to      20 sell ads, so they use the, you know, that's the      21 whole business model.      22 Q. What do you know about Google's      23 business model?      24 A. Well, Google's, obviously, a pretty      25 complicated company with a number of different</p>
<p style="text-align: right;">Page 67</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 search terms?      3 A. I imagine they do.      4 Q. Do you think that when people search      5 inside a given book with additional search      6 terms, that Google keeps records of that?      7 A. I am sure in some raw data form, any      8 click that the consumer made within a Google      9 site is, you know, whether it's kept, how it's      10 aggregated, I don't know, but at some moment,      11 Google has a record of the clicks that the      12 consumers make in Google sites.      13 Q. Well, I don't know what you mean by      14 click, but I'm saying do they keep a record of a      15 search term entered by a user, that in their      16 function that's called Search Within the Book?      17 MR. McGOWAN: Objection. I think you      18 crossed companies in that question.      19 MS. ZACK: I may have. I'm sorry.      20 Well, there is a Search Inside the Book      21 feature of Google.      22 A. So, yes, so my understanding is the      23 main way consumers interact with Google Books is      24 they enter a search term at the main Google      25 website or possibly at Google Books. I</p>	<p style="text-align: right;">Page 69</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 products and services. Are you talking about      3 search?      4 Q. Yes, let's talk about search.      5 A. So is your question what is the      6 business model of Google?      7 Q. Um-hmm.      8 A. So my understanding is that Google      9 provides search functionality, and they sell ads      10 that are key to search terms.      11 Q. Do they have any way of targeting ads      12 to users?      13 MR. McGOWAN: Objection as to form.      14 You may answer.      15 A. So I'm not an expert on Google search      16 engine. My understanding is that, for example,      17 I am more likely to receive ads for businesses      18 in New Haven, Connecticut than someone who      19 doesn't live in New Haven, Connecticut.      20 So there is some targeting, but I      21 don't know the intricacies of it, and I'm not an      22 expert on that.      23 Q. Do you know whether or not Google      24 uses information it obtains from searches made      25 within Google Books for purposes of its general</p>

<p style="text-align: right;">Page 70</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 ad targeting?      3 MR. McGOWAN: Objection, foundation.      4 A. So I don't know about that      5 specifically.      6 Q. Isn't it relevant to your report,      7 what benefits Google is getting from Google      8 search and Google Books?      9 MR. McGOWAN: Objection, foundation.      10 You may answer.      11 A. Actually, I don't think it's that      12 relevant to the specific questions that I      13 addressed in my report, no.      14 Q. So you're saying to me that you don't      15 think understanding Google's financial      16 interests, with respect to its search engine, is      17 relevant to the conclusions you have reached in      18 your report?      19 MR. McGOWAN: Objection, foundation.      20 You may answer.      21 A. So, for example, I don't think it's      22 relevant to the question of whether Google Books      23 is a new good.      24 Q. Okay, anything else it's not relevant      25 to?</p>	<p style="text-align: right;">Page 72</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 if you count up all the costs and benefits that      3 Google's received, I am not convinced that the      4 Google Books project was a positive, what we in      5 economics call a net present value project for      6 Google. But that's, you know, not germane to my      7 conclusions.      8 Q. You're not convinced? Have you      9 analyzed that?      10 A. It's not germane to my conclusions.      11 Q. Whether it's germane or not, you have      12 not done any analysis of the benefits to Google,      13 so how could you possibly express an opinion      14 about it?      15 You haven't even asked Google; have      16 you?      17 MR. McGOWAN: Objection,      18 argumentative, compound.      19 MS. ZACK: I'll withdraw it.      20 Q. You've been retained by Google.      21 You haven't asked anyone at Google      22 how much money they make or from Google Books?      23 MR. McGOWAN: Objection, foundation,      24 asked and answered.      25 You may answer.</p>
<p style="text-align: right;">Page 71</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 A. I don't think it's particularly      3 relevant to the question of whether the search      4 output is a compliment or substitute to the      5 purchase of the good -- of the book.      6 I, I can -- in the final section of      7 the report, I considered, you know, whether a      8 market for search terms would occur. I think      9 it's not that relevant to that either.      10 Q. Referring you to, back to page 2,      11 paragraph 7, you conclude, your conclusion      12 number 2 is Google Books provides value to      13 authors; correct?      14 A. Correct.      15 Q. Does Google Books provide value to      16 Google?      17 A. I believe Google Books probably      18 provides value to Google, that it's -- I      19 obviously didn't express an opinion about it.      20 Q. Do you have any doubt that Google      21 Books provides value to Google?      22 MR. McGOWAN: Objection, vague.      23 You may answer.      24 A. I, I am not -- I have, I am not      25 convinced that the Google Books project was a,</p>	<p style="text-align: right;">Page 73</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 A. There is not -- I was retained to      3 answer specific questions. The answer to that      4 question is not germane to these three      5 conclusions summarized in point 7.      6 Q. Seven (3), you say "Economic analysis      7 provides no reason to believe that Google Books      8 has superceded any potential market for books or      9 licenses to scan and index books," and your      10 reference there to economic analysis, is that      11 the economic analysis in your report?      12 A. Correct.      13 Q. You are not referring to any other      14 economic analysis?      15 A. Correct.      16 Q. Referring you to paragraph 9, "Google      17 Books is a search tool developed by Google."      18 A. Yes.      19 Q. What do you mean by a search tool?      20 A. I mean that Google Books is a      21 mechanism for consumers to, or users, to search.      22 Q. Do you consider Google, Google's      23 general search engine, to be a search tool?      24 A. I do.      25 Q. Are there any differences that you're</p>

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<p style="text-align: right;">Page 74</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 aware of that you consider material between the      3 Google search engine, generally, and Google      4 Books?</p> <p>5 A. Well, so Google Books is the marriage      6 of the Google digitization project, Google      7 search functionality and, you know, a display      8 mechanism that's particular to books.</p> <p>9 So it's, you know, Google Books is      10 distinct from the rest of the search engine.      11 Though, it, obviously, uses expertise related to      12 the general search expertise.</p> <p>13 Q. So Google's -- can we -- I don't know      14 what to call it, but the general search engine.      15 You know what I'm talking about when      16 we talk about Google's general search engine, to      17 distinguish it from the Google Books search      18 engine, can we use those terms generally here?</p> <p>19 MR. McGOWAN: Object, vague,      20 foundation.</p> <p>21 MS. ZACK: I don't want to be vague.      22 I want to make sure the witness understands      23 what we're talking about.</p> <p>24 Q. Do you understand those distinctions?      25 A. So you're going to use the term the</p>	<p style="text-align: right;">Page 76</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 program, the snippet, the whole text, the, the      3 partner.</p> <p>4 Q. Do you understand that Google Books      5 involves Google obtaining off-line content and      6 making it available on the Internet?</p> <p>7 MR. McGOWAN: Objection, vague.      8 You may answer.</p> <p>9 A. I understand that the Google Books      10 project involved Google digitizing physical      11 books.</p> <p>12 Q. That's different than the general      13 Google Web engine?</p> <p>14 MR. McGOWAN: Objection, vague.      15 Calls for speculation.</p> <p>16 A. So I'm not aware of every program      17 that Google has undertaken. For example, I      18 don't know whether there's a digitization      19 component in, say, Google Scholar.</p> <p>20 But when we think about the Google      21 search engine, certainly, the most common thing      22 that we could -- that my understanding is it      23 searches materials, you know, in large part, on      24 the Web.</p> <p>25 Q. In order to search the off-line</p>
<p style="text-align: right;">Page 75</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 general Google search engine and Google Books      3 separately?</p> <p>4 Q. Right.</p> <p>5 A. Okay.</p> <p>6 Q. Is it your understanding that      7 Google's general search engine crawls the Web?</p> <p>8 A. It is my understanding that Google      9 search engine searches Web pages, yes.</p> <p>10 Q. Those Web pages are not placed on the      11 Web by Google; right?</p> <p>12 A. In general, those Web pages are not      13 placed on the Web by Google.</p> <p>14 Q. With respect to Google Books, do you      15 understand that Google actually digitizes      16 material for purposes of searching and placing      17 it on the Web?</p> <p>18 MR. McGOWAN: Objection, foundation.      19 Calls for speculation.</p> <p>20 You may answer.</p> <p>21 A. So my understanding is that Google      22 digitizes material. That that material is      23 searched in Google's servers, and then the      24 material -- and then, you know, the material      25 displayed is, you know, depending on the</p>	<p style="text-align: right;">Page 77</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 material, the books, Google digitizes it;      3 correct?</p> <p>4 A. Yes, correct.</p> <p>5 Q. So Google Books then involves not      6 just a search tool, but the creation of an      7 entire database of digital books; correct?</p> <p>8 A. The Google search, the Google Books,      9 you know, in order to create the search tool,      10 the search tool is the product facing consumers.      11 As an input to that, Google created this digital      12 database.</p> <p>13 Q. So wouldn't it be more correct to say      14 Google Books is a digital database of books,      15 coupled with the search tool?</p> <p>16 A. I think you could say that. I      17 wouldn't say it's more correct. I think that      18 Google Books -- I mean, you know, those are both      19 pieces of the project.</p> <p>20 You know, when I describe the Google      21 Books, I'm thinking of the product that's      22 relevant to consumers in the marketplace, and      23 that's a search tool.</p> <p>24 That is a search tool that relies on      25 the comprehensiveness of the database that's</p>

<p style="text-align: right;">Page 78</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 created. So, you know, obviously, the      3 digitization is an important input to the final      4 product.</p> <p>5 Q. Is the provision of the books to the      6 library, the digital copies of the books to the      7 library, an important component of the project?</p> <p>8 MR. McGOWAN: Objection, foundation.      9 You may answer.</p> <p>10 A. So, again, I understand that as part      11 of its agreement with the libraries, Google      12 provides the facilities that allow the libraries      13 to make a digital copy.</p> <p>14 I don't -- I, I imagine, I think that      15 -- I won't say imagine -- I think that's an      16 important piece of, I understand, from, say,      17 Mr. Courant's deposition, that that's an      18 important component of the library's      19 participation.</p> <p>20 But, again, I would think that for      21 the purposes of the consumer product, which is      22 what I'm focused on in Section 1 of the report,      23 the digital copy to the library is not the      24 consumer product that I'm really describing.</p> <p>25 Q. But from Google's point of view, it's</p>	<p style="text-align: right;">Page 80</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 Isn't it important to Google to have      3 books to digitize?</p> <p>4 A. It is important to Google to have      5 books to digitize.</p> <p>6 Q. Is it your understanding that they      7 get the books from the libraries?</p> <p>8 A. It is my understanding that the      9 books, that the core of the books that are      10 included, were from the libraries.</p> <p>11 Q. Is it your understanding that the      12 libraries provide those books to Google for      13 digitization in exchange for a digital copy to      14 the libraries?</p> <p>15 MR. McGOWAN: Objection to the extent      16 it calls for a limited conclusion.</p> <p>17 You may answer.</p> <p>18 A. So is my understanding that the      19 libraries provide the books to Google for      20 digitization.</p> <p>21 It's also my understanding that the      22 opportunity to make a digital copy is of value      23 to the libraries.</p> <p>24 So, you know, I cannot, I cannot say      25 exactly what was essential to the participation</p>
<p style="text-align: right;">Page 79</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 an important component because that's how Google      3 gets the physical books to copyright?</p> <p>4 MR. McGOWAN: Objection, vague.      5 You may answer.</p> <p>6 A. So my understanding is from, say,      7 Mr. Courant's deposition, is that the ability to      8 make a digital copy on the part of the      9 libraries, is a value to the libraries.</p> <p>10 Q. I wasn't asking what was the value to      11 the libraries.</p> <p>12 I was asking what was the value to      13 Google.</p> <p>14 And I said isn't it important to      15 Google, the library digital copy, since that is      16 necessary for Google to get the print books and      17 digitizes, puts into its search tool, and then      18 provides digital copies back to the libraries?</p> <p>19 MR. McGOWAN: Can I have that read      20 back, please.</p> <p>21 (The record was read.)</p> <p>22 MS. ZACK: I will restate it.</p> <p>23 Q. I was saying my question is not about      24 the library's perspective, but about Google's      25 perspective.</p>	<p style="text-align: right;">Page 81</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 of every partner. But I think the facility to      3 make a digital copy, would be an important      4 component of the library's participation.      5 That's my understanding from Mr. Courant.</p> <p>6 Q. That's what got the libraries to      7 participate; correct?</p> <p>8 MR. McGOWAN: Objection. Calls for      9 speculation.</p> <p>10 You may answer.</p> <p>11 A. So as I just said, I understand the      12 opportunity to make a digital copy is of value      13 to the libraries, but I really can't say whether      14 that was the crucial element for every library.</p> <p>15 Q. What kind of value is it to the      16 libraries to get the digital copy?</p> <p>17 A. So my understanding from, for      18 example, Mr. Courant's deposition, is that, you      19 know, the library's fundamental mission      20 includes, for example, preservation.</p> <p>21 And so the mere existence of the      22 opportunity to make a digital copy, could be of      23 value to the library.</p> <p>24 So I think Mr. Courant, you know,      25 mentions the floods in New Orleans, so that, you</p>

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<p style="text-align: right;">Page 82</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 know, the mere existence of the digital copy,      3 even if it's not used, you know, the existence      4 of the potential to make the digital copy is of      5 value to the libraries.      6 My understanding is the libraries,      7 you know, exactly the totality of what the      8 libraries plan to do and whether they will all      9 take advantage of the opportunity to make a      10 digital copy, has not yet been completely, you      11 know, resolved.      12 Q. How do you know that, how do you know      13 it hasn't been resolved?      14 A. Well, since technology's evolving,      15 the set of things that the libraries can do      16 with, if they were to make a digital copy today,      17 is smaller than the set of things they could do      18 if they were to make a digital copy at some      19 point in the future.      20 And I think, you know, in      21 Mr. Courant's deposition, he discusses, you      22 know, he mentions things like accessibility      23 features for the disabled and suggests that the      24 full set of things the library might do, given      25 that the opportunity created digital copy</p>	<p style="text-align: right;">Page 84</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 A. I don't think it's necessarily clear      3 that it does. So, for example, if the      4 opportunity to make a digital copy is, you know,      5 if the library's plan is to not make the digital      6 copy until such time, you know, not -- if the      7 library's, for example, primary purpose is      8 preservation, it's not clear to me that the      9 digital copy has any monetary value.      10 I think it depends on what the      11 library does with it.      12 Q. Well, does it have monetary value if      13 they would have to otherwise pay for the digital      14 copy and they get it for free?      15 MR. McGOWAN: Same objection.      16 You may answer.      17 A. I think that's a tricky question      18 because my understanding is that while,      19 obviously, libraries, many libraries have      20 digitization projects, it's not at all clear      21 that the books digitized as part of the Google      22 Library Project, would have, in large part,      23 certainly not all or in large part, been      24 digitized by those libraries in the world where      25 the Google Library Project didn't exist.</p>
<p style="text-align: right;">Page 83</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 exists, has not been fully explored.      3 Q. Would you say that the digital copy      4 to the library has a monetary value to the      5 library?      6 A. If the library makes a digital copy,      7 depending on what it does with it, it could.      8 But I don't know for a fact that in many or most      9 cases, it would.      10 Q. Well, I'm just talking about this      11 particular project, Google Books, where Google      12 makes available to libraries, digital copies.      13 Does that have a monetary value to      14 the libraries?      15 MR. McGOWAN: Objection, asked and      16 answered.      17 You may answer.      18 A. I think what I said was if the      19 library makes a copy, it may, depending on what      20 the library does with it.      21 Q. Well, does the fact, does having a,      22 is the fact that the library has in its      23 possession a digital copy, is that worth      24 something monetarily?      25 MR. McGOWAN: Same objection.</p>	<p style="text-align: right;">Page 85</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 So I don't think I can assert, as you      3 have, that the Google Library Project has saved      4 them from another digitization effort.      5 Certainly, in some circumstances, it      6 may. But, you know, I think there may be      7 circumstances in which the library, simply      8 because of resource constraints, was not going      9 to undertake a digitization project.      10 Q. So just to make sure I understand.      11 If in my house I have 10 couches, and      12 someone gives me an 11th, and I don't really      13 need it, that provides no monetary value to me,      14 in your view?      15 A. Well, monetary -- you may derive some      16 utility, some happiness from having the couch.      17 But you are not going to receive any monetary      18 value for it, unless you do something to      19 monetize it.      20 Q. So the only value I get is the      21 utility value?      22 A. So it depends on what you do with the      23 couch.      24 Q. So you're saying, switching back to      25 the libraries, there would be, is it your view</p>

<p style="text-align: right;">Page 86</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 that the libraries would have a utility value in      3 the digital copies they get from Google?      4 A. So my understanding, as I've said      5 before, is that the libraries value the      6 opportunity to create a digital copy.      7 Whether that's a monetary value, I      8 mean it's a little hard to think about utility      9 when you think of an entity like the library.      10 You know, so, for example, if the      11 library chooses to make no digital copy, but,      12 you know, thinks about, you know, except in the      13 eventuality where the library burns down, you      14 know, I think the librarian is probably happier      15 in that circumstance, but I don't think there's      16 a monetary value.</p> <p>17 Q. Do you know how many digital copies      18 have been provided by Google to libraries in the      19 Google Library Project?</p> <p>20 MR. McGOWAN: Objection, foundation.      21 You may answer.</p> <p>22 A. So my understanding is that the      23 libraries have the opportunity to make a digital      24 copy, and I do not know how many digital copies      25 the libraries have made.</p>	<p style="text-align: right;">Page 88</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 digital copies is not germane to your report?      3 A. Whether or not the libraries have      4 made a digital copy and what it is that the      5 library will do with them, is not, is outside      6 the scope of my assignment.      7 It may be important to the case, but      8 it is not important to my report.      9 Q. Do you know with respect to the      10 Google Library Project, not the Partner Program      11 portion, how many of the books that Google scans      12 and includes in the search tool, as you describe      13 it, were commercially available books, as      14 opposed to not commercially available books?      15 A. I don't know that.      16 Q. If I told you that 90 percent of the      17 books were not commercially available, would      18 that affect your opinions in any way?      19 A. That would not affect my opinions.      20 Q. If I told you that they were 10      21 percent, would that affect your opinion?      22 A. No.      23 Q. Referring you to paragraph 10 on page      24 3 of your report, about a little, you know, over      25 halfway down, there is a sentence that begins,</p>
<p style="text-align: right;">Page 87</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 Q. So you didn't get that information      3 from Google?      4 A. I did not get that information from      5 Google, if Google has it.      6 Q. They have it.      7 A. Okay.      8 Q. Would it matter to you how many      9 libraries have chosen to afford themselves of      10 that right to get a digital copy?      11 MR. McGOWAN: Objection, calls for      12 conclusion.      13 You may answer.      14 A. So I think that's beyond the scope of      15 my report. In my report, I opine on whether      16 Google Books is a new book, whether it provides      17 value to authors, and whether Google Books has      18 superseded any potential market for licenses to      19 scan and index books.      20 I don't think that the exact extent      21 to which the libraries have or have not used      22 their digital -- their opportunity to make a      23 digital copy, is germane to any of those three      24 questions.      25 Q. So the libraries' uses of their</p>	<p style="text-align: right;">Page 89</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 "Google provides a snippet view for works that      3 have not been confirmed to be in the public      4 domain and for which the author or publisher has      5 not requested that the book be removed from      6 snippet view."      7 A. Yes.      8 Q. That's based -- you cite the      9 supplemental narrative responses of Google?      10 A. Um-hmm, yes.      11 Q. Have you personally looked at      12 snippets in Google Books?      13 A. I have.      14 Q. But you say you haven't used the      15 search within Inside the Book tool?      16 A. To search inside a specific book, as      17 opposed to within the set of books that use the      18 search terms, I do not recall doing that.      19 Q. What snippets have you seen?      20 From what book snippets have you      21 seen?      22 I mean give me an example of how you      23 did a search in Google and then how snippets      24 came up?      25 A. Well, I mean let me point out that</p>

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<p style="text-align: right;">Page 90</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 while, you know, I've described what I've done      3 for the report in the report, Google Books has      4 been around for a long time, and I'm a scholar,      5 so I've used Google search tools extensively.      6 So, you know, I cannot count how many      7 times I have used Google Books.      8 So an example that I describe in my      9 report, you know, I was curious about the term      10 choke price, which I use in my report.      11 I searched the term choke price. A      12 number of books, many books came up. Some in      13 snippet view. Some with more Partner Program --      14 some in the public domain, some in snippet view      15 -- or I infer in the public domain, some in      16 snippet view, and some Partner Program books      17 where large sections of the book were available.      18 Q. So did you search out the ones that      19 were in snippet view?      20 A. What do you mean did I search on the      21 ones in snippet view?      22 Q. You got a list of books -- you put in      23 the term choke price?      24 A. Um-hmm.      25 Q. You got a list of books; right?</p>	<p style="text-align: right;">Page 92</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 And, you know, make a decision about whether or      3 not the book is relevant to me and then, you      4 know, maybe get the book.      5 Q. So you haven't done any further      6 searches, using that search box, for further      7 snippets in the book?      8 A. I don't believe -- I mean I may have      9 at some point in a research, in research, but I      10 don't think I did it for this report.      11 Q. Do you recall that you can do      12 many snippets -- I mean do you have any      13 recollection or knowledge that you can, using      14 that search box, you can do repetitive or      15 multiple searches within a book and get      16 different snippets?      17 MR. McGOWAN: Objection, vague.      18 You may answer.      19 A. So I know that there are limits to      20 the extent to which you can undertake searches      21 and get snippets, different snippets from the      22 same books.      23 But I do not remember exactly what      24 those limits are. I mean I know each snippet is      25 about three lines, and I know there are limits</p>
<p style="text-align: right;">Page 91</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 A. I got, yeah, a display of books, I      3 would say, yes.      4 Q. I did it too. I saw 2,700 books,      5 choke price.      6 Did you click on any of the books      7 that came up?      8 A. Yes.      9 Q. You're saying that some of the books      10 that you clicked on were in snippet view?      11 A. So it is a good -- I have seen many      12 Books in snippet view on Google Books. Whether      13 the choke price search led to books in snippet      14 view, I can't specifically remember, but I      15 believe so, yes.      16 Q. So if you click on a book that's in      17 snippet view, there is a window that comes up      18 that says search within the book.      19 You're not familiar with that?      20 A. I don't remember -- so I don't, I      21 don't think I've used that functionality      22 specifically.      23 I have looked -- I, generally, when I      24 find a book in snippet view, I look at the      25 snippets because that's what I'm interested in.</p>	<p style="text-align: right;">Page 93</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 as to how many snippets totally you can receive      3 and how many for a given search term and how      4 many for different search terms, but I don't      5 recall those, offhand.      6 I have received the message you have      7 searched this book too many times, that's come      8 up.      9 But I think that's on repeated visits      10 to the site that that happens to have happened      11 to me.      12 So I know such security terms exist,      13 both from my reading and from my personal      14 experience.      15 Q. When you say three lines, are you      16 talking about three lines like this or three      17 sentences?      18 A. My understanding is three long lines.      19 Q. Three lines of snippets? You've      20 never seen snippets longer than three lines?      21 A. Well, certainly for Partner Program      22 books and for books in the public domain, you      23 see long things.      24 Q. I'm talking about books in snippet      25 view.</p>

<p style="text-align: right;">Page 94</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 A. I don't think I've seen snippets      3 longer than three lines. I think it's about an      4 8th of a page.      5 Q. Have you determined how much of the      6 books that Google makes available in snippet      7 view, are available by Google's users, totally,      8 to see snippets?      9 MR. McGOWAN: Objection.      10 Q. In other words, how much of the book      11 is available?      12 A. So my understanding is, as I said,      13 each, each session, each user limits, you know,      14 each, for each session and for each user, there      15 is a limited number of snippets that can be      16 returned to the -- in response to the user's      17 search.      18 Q. But that wasn't my question.      19 A. So your question was across all      20 users?      21 Q. Yes, I'm saying how much of the book      22 is available to be searched across all users?      23 MR. McGOWAN: Objection, compound.      24 You may answer.      25 A. So my understanding is that the</p>	<p style="text-align: right;">Page 96</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 you know, determined to be harmful and, you      3 know, has hurt consumers.      4 But I'm describing the economic      5 literature on new goods, and I think I describe      6 it accurately.      7 Q. So I mean let's just take an example      8 of something like cigarettes.      9 I mean at a certain point in time,      10 that was a new good?      11 A. Well, probably. I think cigarettes,      12 yeah, cigarettes, you know, people have been      13 drying and rolling tobacco for before there were      14 markets for it.      15 But commercial cigarettes, at some      16 point, were probably a new good.      17 Q. So the determination of it being a      18 new good, does not depend on it improving      19 consumer well-being; does it?      20 A. Well, as I explained in the report,      21 what makes a new good, a good new, is its      22 ability to satisfy previously unmet or at least      23 badly met needs.      24 Q. Including addiction?      25 A. So I believe that cigarettes satisfy</p>
<p style="text-align: right;">Page 95</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 entirety of the book is available to be      3 searched, in general.      4 (Brief recess taken.)      5 FURTHER EXAMINATION      6 BY MS. ZACK:      7 Q. Paragraph 15 of your report, please,      8 on page 4, it starts by saying, "There is basic      9 agreement in the field of economics that the      10 introduction of new goods is an important      11 contributor to improved consumer well-being."      12 I mean is that a blanket statement      13 true to any new good, even something like slave      14 labor?      15 MR. McGOWAN: Objection, foundation.      16 You may answer.      17 A. So I'm not sure slave labor is a      18 good. I think slave labor is a production      19 input.      20 I think what I say is right, that the      21 introduction of new goods is an important      22 contributor to improved consumer well-being.      23 I imagine you could consider a      24 situation in which a new good is introduced      25 that, you know, subsequently, for example, is,</p>	<p style="text-align: right;">Page 97</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L      2 some consumer desires. Whether, you know, that,      3 you know, subsequent to the introduction of      4 cigarettes, they turned out to, you know, have      5 very harmful health effects, you know, doesn't,      6 I think negate the basic principle that the      7 advance of consumer well-being has been driven,      8 in large part, by the introduction of new goods.      9 Q. But I mean economics generally      10 doesn't really look at the morality of the      11 situation; right?      12 MR. McGOWAN: Objection, vague.      13 You may answer.      14 A. I mean, you know, there is a      15 literature on economics and morals. But, you      16 know, there's a literature on economics and      17 morals.      18 Q. Right, but what I asked was      19 generally, does economics consider morals in its      20 determinations?      21 MR. McGOWAN: Objection, vague.      22 You may answer.      23 A. So I, the field of economics that I      24 am relying on here, do not contain explicit      25 discussions of morality in any, to any great</p>

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